

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 13093, of James E. Gibson, pursuant to Paragraph 8207.11 of the Zoning Regulations, for variances from the prohibition against allowing an addition to a dwelling which now exceeds the lot occupancy requirements (Paragraph 7107.21), from the lot occupancy requirements (Sub-section 3303.1 and Paragraph 7107.23) and from the side yard requirements (Sub-section 3305.1 and Paragraph 7107.22) to permit a proposed rear deck addition to a row dwelling which is a non-conforming structure in an R-2 District at the premises 5328-41st Street, N.W. (Square 1742, Lot 50).

HEARING DATE: December 12, 1979
DECISION DATE: January 5, 1980

FINDINGS OF FACT:

1. The subject property is located in an R-2 District on the west side of 41st Street between Military Road and Jenifer Street, N.W. The subject property is a through lot, also having frontage on Belt Road at the rear.
2. The subject property is nineteen feet wide, and varies in depth from 114.15 to 119.05 feet. The property is improved with a row dwelling constructed prior to the adoption of the present Zoning Regulations.
3. The R-2 District requires single family dwellings to have an eight foot side yard, and normally requires a minimum lot area of 3,000 square feet and a minimum lot width of thirty feet for a semi-detached dwelling. The existing lot and structure are thus non-conforming as to lot area, lot width and side yard.
4. The existing dwelling occupies the full width of the lot for a depth of 35.4 feet. The north side of the dwelling extends to a depth of 55.7 feet for a width of 14.3 feet. There is a 4.7 foot open court which adjoins the building for the rear 20.3 feet of the structure.
5. The level of the main floor of the house is approximately six feet above the level of the rear yard. A portion of the first floor at the northwest corner of the building was formerly an open porch, which is covered by the second floor of the dwelling. That porch had a flight of steps extending past the rear of the house leading to the level of the rear yard. The applicant testified that the porch was in a deteriorated condition and had been demolished.

6. The applicant proposes to reconstruct the existing porch floor and extend it further to the side and rear of the dwelling.

7. The plans as originally filed with the application marked as Exhibit No. 3 of the record, showed that the deck would extend two feet into the open court at the side of the house alongside the porch and would also extend ten feet toward the rear of the lot for a width of fifteen feet, nine inches. Beyond the ten foot rearward extension, there would be a flight of steps leading to the yard. The original plans also contemplated parking under the deck.

8. Prior to the hearing, the applicant submitted revised plans, marked as Exhibit No. 18 of the record. The revised plans showed that the deck would extend only four feet from the rear of the house. The applicant also provided details of a privacy screen to be erected on the south side of the deck to protect the privacy of the adjacent dwelling. The applicant further testified at the hearing that parking would not be permitted under the deck.

9. The Zoning Regulations permit a maximum lot occupancy of forty percent in an R-2 District. The permitted building area for this lot is thus 836.16 square feet. The existing dwelling already occupies 1058.30 square feet, and is thus non-conforming. The applicant originally proposed to cover 190 additional square feet. The revised plans however would reduce the area to be covered by the deck by approximately ninety-five feet. Since the existing building already exceeds the permitted occupancy, and because there will be an addition to the occupancy, a variance is still required.

10. The R-2 District normally requires a minimum side yard of eight feet on one side of a semi-detached dwelling. The existing dwelling has a party wall on lot lines for its full depth on the north side, and for 35.4 feet on the south. There is a 4.7 foot wide open court for the remainder of the building on the south. The applicant proposes to leave 2.7 feet between the side of the deck and the south lot line. This would be 5.3 feet short of the eight foot yard requirement and therefore requires a variance.

11. The deck would be used to provide additional outdoor living area adjunct to the main floor of the house. It would also provide access to the rear yard from the main floor of the house.

12. There would still be a rear yard in excess of fifty feet from the back of the deck. The regulations require a minimum rear yard of twenty feet.

13. Advisory Neighborhood Commission - 3E, by statement dated December 11, 1979, reported that it had voted 5-0 not to oppose the revised plan for the deck and privacy fence. The ANC reported that all the neighbors who were contacted, except one, were either neutral or in favor of the revised plans. The ANC reported that the subject lot is larger than many others in the square, but still represented an anomaly in the area. The ANC stated that it believed that this type of variance "should be largely left to the wishes of the neighbors." The ANC further noted its concern that this case not serve as a precedent for other cases.

14. As to the issues and concerns of the ANC, the Board finds that the owners of the two immediately abutting properties submitted letters to the record in support of the application. The issues raised by the opposition are discussed below. The Board agrees that there is an exceptional condition of the property which qualifies it for a variance. The Board further restates its constantly taken position that each case must be decided on its own merits, based on the specific set of facts presented in the record.

15. The owner of property located at 5332 - 41st Street, which is separated from the subject property by one intervening dwelling, submitted a letter to the record in opposition to the application. That opposition was based on and was received prior to the revised application. The opposition objected to the deck as an invasion of his privacy. He also objected to parking being located under the deck.

16. As to the issues raised in opposition, the Board finds that the privacy screen shown on the plans will effectively minimize the loss of privacy alleged by the opposition. The Board further notes that the rear yard of the opposition's property is nineteen feet away from the deck, and that the intervening property owner at 5330 - 41st Street, who would be most directly affected, supported the application. The Board further notes that the addition is a minimal extension of only four feet, and finds that no material harm would occur. The Board also has already found that no parking will be permitted under the proposed deck.

CONCLUSIONS OF LAW AND OPINION:

The Board concludes that the requested variance is an area variance, the granting of which requires the showing of an exceptional or extraordinary condition of the property which creates a practical difficulty for the owner. The Board concludes that the width of the existing lot and the nature of the existing improvements, both of which predate the existing Zoning Regulations, creates such a condition. The Board further concludes that strict application of the regulations would deprive the owner of access from the main floor to the rear yard and would deprive the owner of reasonable enjoyment of outdoor living area adjacent to the main floor, thus constituting a practical difficulty to the owner. The Board concludes that it has accorded to the Advisory Neighborhood Commission the "great weight" to which it is entitled. The Board further concludes that the requested relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose and integrity of the zone plan as embodied in the Zoning Regulations and Maps. It is therefore ORDERED that the application is GRANTED in accordance with the revised plans marked as Exhibit No. 18 of the record.

VOTE: 5-0 (Walter B. Lewis, William F. McIntosh, Connie Fortune Leonard L. McCants and Charles R. Norris to GRANT).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

ATTESTED BY: _____


STEVEN E. SHER
Executive Director

FINAL DATE OF ORDER: 10 MAR 1980

UNDER SUB-SECTION 8204.3 OF THE ZONING REGULATIONS "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT."

THIS ORDER OF THE BOARD IS VALID FOR A PERIOD OF SIX MONTHS AFTER THE EFFECTIVE DATE OF THIS ORDER, UNLESS WITHIN SUCH PERIOD AN APPLICATION FOR A BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY IS FILED WITH THE DEPARTMENT OF LICENSES, INVESTIGATIONS, AND INSPECTIONS.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 13093 of James E. Gibson, pursuant to Paragraph 8207.11 of the Zoning Regulations, for variances from the prohibition against allowing an addition to a dwelling which now exceeds the lot occupancy requirements (Sub-section 3303.1 and Paragraph 7107.23) and from the side yard requirements (Sub-section 3305.1 and Paragraph 7107.22) to permit a proposed rear deck addition to a row dwelling which is a non-conforming structure in an R-2 District at the premises 5328 41st Street, N. W., (Square 1742, Lot 50).

HEARING DATE: December 12, 1979

DECISION DATE: January 5, 1980

DISPOSITION: The Board GRANTED the application by a vote of 5-0 (Walter B. Lewis, William F. McIntosh, Connie Fortune, Leonard L. McCants to grant).

FINAL DATE OF ORDER: March 10, 1980

ORDER

A property owner residing at 5332 - 41st Street filed a timely Motion for Reconsideration of the Board's Order granting the application. Among the grounds for the Motion are that the movant was not available for the public hearing of 12/12/79, that he feels that some of the neighbors may have been coerced into not opposing the application, that he feels his privacy is being invaded and that he fears that a precedent may be set. The Board notes that by letter of November 12, 1979 the movant had advised the Board of his objection and that the letter was part of the record. The Board further notes that in Finding of Fact No. 15 the Board noted the objection and in Finding of Fact No. 16 responded to it. Upon consideration of the Motion and the Order the Board finds that the Motion fails to state any substantive respects in which the final decision is claimed to be erroneous. The Board concludes that it has committed no error in deciding the application. It is therefore ORDERED that the Motion for Reconsideration is DENIED.

VOTE: 5-0 (Walter B. Lewis, William F. McIntosh, Charles R. Norris, Connie Fortune and Leonard L. McCants to deny).

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BY ORDER OF THE BOARD OF ZONING ADJUSTMENT

ATTESTED BY: Steven E. Sher
STEVEN E. SHER
Executive Director

FINAL DATE OF ORDER 27 MAY 1980

UNDER SUB-SECTION 8204.3 OF THE ZONING REGULATIONS "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT."

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